IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 223 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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S.S. KHANDWAWALA (IPS) SPL IGP AND MANAGING DIRECTOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 223 of 2001
NANAVATI ASSOCIATES for Petitioner No. 1-3
MR HH PATEL, PUBLIC PROSECUTOR for Respondent No. 1
MR BY MANKAD for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /07/2001

C.A.V. JUDGEMENT

1. This revision is directed against the order dated 7-5-2001 of Sessions Judge, Junagadh, who has rejected the application under sec.227 of the Code of Criminal

Procedure for discharge of the revisionist.

2. The facts giving rise to this revision have a checkered history. A complaint was filed on 2-11-1976 against the revisionist, which has not been decided so far after a lapse of 24 years. The detailed history is not to be traced out in this revision. After institution of complaint on 2-11-1976, the revisionist was committed to the Court of Sessions. On 20-10-1982, an application was moved for quashing the order of committal, because no sanction was obtained for prosecution of the revisionist under sec.197 of the Code of Criminal Procedure. This application was rejected on 18-12-1982. On 14-3-1983, an application under sec.227 of the Code of Criminal Procedure was moved, which was converted into Criminal Revision No.25/1983 on 8-4-1983. This Criminal Revision was dismissed on 19-5-1983. Thereafter, Special Criminal Application No.894/1983 was filed in this Court, which was decided on 29-2-2000. In this order, it is indicated that, at the end of the arguments, learned counsel for the petitioner sought permission to withdraw the Special Criminal Application with liberty to file an application for discharge before the court below. Permission as prayed for was granted and the Special Criminal Application was disposed of as withdrawn. In view of this order of this Court, application Ex.18 under sec.227 of the Code of Criminal Procedure was moved on 5-6-2000. In this application, two grounds were taken, one was that the prosecution is incompetent for want of sanction under sec.197 of the Code of Criminal Procedure. The other ground was bar of secs.159 and 160 of the Bombay Police Act. This application was kept pending and certain clarifications were desired by the learned Sessions Judge in his order dated 5-6-2000. On 8-8-2000, direction was given in Criminal Misc.Application No.3661/2000 arising out of Special Criminal Application No.894/1983 already decided by this Court. This Court found that, "the applicants are entitled to file discharge application before the court below, for which earlier order was passed by this Court with the consent of the parties. In view of the aforesaid facts and circumstances of the case, no further clarification is required to be given at this stage, as the same will affect the rights and contentions of the parties. In view of the aforesaid facts and circumstances of the case, the learned Sessions Judge, Junagadh is hereby directed to hear the discharge application submitted by the applicants and dispose of the same on merits in accordance with law."

3. Inspite of the aforesaid clear direction of this Court to the Sessions Judge, Junagadh to hear the

discharge application submitted by the applicants and dispose of the same on merits in accordance with law, the learned Sessions Judge, in the impugned order dated 7-5-2001, observed that he was of the opinion that once the said points were decided on merits regarding secs.227 and 197 of the Code of Criminal Procedure, the present application can not be entertained once again, hence, the application was dismissed. It is this order which is under challenge.

4. Shri KS Nanavati, learned senior Advocate for the revisionist contended that inspite of clear direction of this Court contained in the order dated 8-8-2000 in Criminal Misc.Application No.3661/2000, the learned Sessions Judge, instead of disposing of the discharge application on merits has rejected on technical ground that such application can not be entertained because this question was decided earlier which has become final. He vehemently argued that such attitude of the learned Sessions Judge amounts to clear defiance of the order of the High Court, hence, on this ground alone the impugned order deserves to be set aside and the learned Sessions Judge should be forced and directed to decide the discharge application in accordance with law, as directed by this Court in its earlier order dated 8-8-2000. Secondly, he argued that it is incorrect that the question of want of sanction under sec.197 of the Code of Criminal Procedure was finally decided earlier and hence fresh application under sec.227 of the Code of Criminal Procedure could not be entertained. After going through the record, I find that the application dated 20-10-1982 was not an application under sec.227 of the Code of Criminal Procedure, rather it was an application for quashing the committal order for want of sanction under sec.197 of the Code of Criminal Procedure. This was rejected on 18-12-1982. For the first time, the so-called application under sec.227 of the Code of Criminal Procedure was moved on 14-3-1983, but subsequently it was converted into a Revision Application on 8-4-1983 and Criminal Revision Application No.25/1983 thus came into existence. The said Criminal Revision was dismissed on 19-5-1983. The order for conversion of application under sec.227 of the Code of Criminal Procedure into Criminal Revision is contained in the order dated 8-4-1983 (Annexure-V). Criminal Revision Application No.25/1983 was thereafter dismissed on 19-5-1983, hence, it is difficult to accept the contention of the learned counsel for the respondent that application under sec.227 of the Code of Criminal Procedure was finally rejected on 19-5-1983. Actually, it was Criminal Revision which was dismissed on this date

and not an application under sec.227 of the Code of Criminal Procedure.

5. Feeling aggrieved against the order of rejection of Criminal Revision on 19-5-1983, Special Criminal Application No.894/1983 was filed in this Court, which was disposed of as withdrawn on 29-2-2000 with liberty to the revisionist to file fresh application for discharge before the court below vide Annexure-VII. Thereafter, application Ex.18 was filed on 5-6-2000 before the Sessions Judge. In this application, two grounds for discharge were raised, one was want of sanction under sec.197 of the Code of Criminal Procedure, because the revisionist is a Police Officer and the second ground was that the revisionist being a Police Officer, is entitled to protection under secs.159 and 160 of the Bombay Police Act. These two points were not at all considered by the learned Sessions Judge.

6. The contention of the learned counsel for the respondent has been that, since these points were discussed and decided earlier, the same can not be permitted to be re-agitated. I do not find any force in this contention.

7. The question of want of sanction under sec.197 of the Code of Criminal Procedure was not discussed on any application under sec.227 of the Code of Criminal Procedure. In any case, the bar of secs.159 and 160 of the Bombay Police Act was not at all considered by the learned Sessions Judge. The learned counsel for the respondent argued that these sections do not bar prosecution of the revisionist, but only benefits are to be given to him and it requires evidence, for which, the revisionist could not be discharged and he has to face trial. His further contention has been that changed circumstances have not occurred after dismissal of the earlier application under sec.227 of the Code of Criminal Procedure, hence, the learned Sessions Judge was justified in rejecting subsequent application dated 5-6-2000 (Ex.18). In my opinion, no application under sec.227 of the Code of Criminal Procedure was decided as such, and in any case, the plea of bar or benefit of secs.159 and 160 of the Bombay Police Act was not decided by the learned Sessions Judge earlier, and in view of the directions given by this Court in order dated 8-8-2000, the Sessions Judge was hardly justified in rejecting this application on technical ground. There was clear direction to the Sessions Judge by this Court that he is directed to hear discharge application submitted by the applicants and dispose of the same on merits in

accordance with law. This non-compliance of the direction of this Court is a matter of concern, more particularly, from a senior officer like Sessions Judge. He should have complied with the direction of this Court in letters as well as in spirit. It was in his discretion, after applying judicial mind, either to reject or allow the application (Ex.18). But, this course was not open to him to reject the application on technical ground, that the second application for discharge under sec.227 of the Code of Criminal Procedure is not maintainable.

8. For the reasons stated above, the impugned order can not be sustained. The revision has, therefore, to be allowed and is hereby allowed. The learned Sessions Judge is directed to decide the application Ex.18 moved by the revisionist on merits in accordance with law after hearing both the parties. Since, the application is pending since 2-11-1976, and as it was informed that the complainant is an old man who is reaching 80 years, it is desirable that this plea shall be decided expeditiously. It is, therefore, further directed that the learned Sessions Judge shall decide the application Ex.18 within one month from the date of receipt of certified copy of this judgment.

Dated : __/07/2001. (D.C. Srivastava, J.)

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